# PRESENT STATE OF LABOR LEGISLATION IN AUSTRALIA AND NEW ZEALAND

By Victor S. Clark, Ph.D.,
Bureau of Labor, Washington, D. C

Many of the labor laws of Australia and New Zealand have been borrowed from Great Britain and modified to suit conditions in the colonies. These laws present little of special interest to the outside student, and with regard to them it is sufficient to say that they are abreast the more advanced legislation of the mother country. The one supplementing British experience in the most marked way is the Workers' Compensation Act, which in New Zealand and several of the Australian states has proved, as in Great Britain, the most beneficial of recent enactments for the protection of labor. But Australasian experience with this statute confirms its value, rather than illustrates new features of its operation. In New Zealand the rule of common employment, as affecting an employer's liability for injuries to his workmen, has been entirely abolished.

Therefore, in a short paper like the present, we shall profit most by confining attention largely to the particular class of laws in which New Zealand and Australia have been pioneers—those to prevent strikes and sweating. These are the laws which first come to mind when colonial labor legislation is mentioned; and they cover the field in which the colonies have the most novel and useful experience to offer.

Recently, with the partial failure of the New Zealand act to prevent strikes, there has arisen discussion as to what the original purpose of that statute was; and the theory has been advanced that it was as much intended to prevent sweating as to settle industrial disputes. Strike prevention is spectacular and captures public interest, so undue stress may have been laid on this function or effect of the various arbitration laws; but there can hardly be question that it was indeed the first and principal purpose for which they were enacted. It is equally certain that the projector of the New Zealand law hoped and predicted that it would decrease sweating, and that these two objects were linked together at the very begin-

ning of this legislation. Shortly after the New Zealand law was in operation, Victoria by slightly different machinery undertook directly to prevent sweating, and incidentally to provide against industrial disputes. The key to the subsequent evolution of these two acts and their successors is found in these two dominant motives, which here conflicting and there reconciled, have shaped the efforts of legislators.

Students of this subject will recall that the New Zealand arbitration act was passed in 1894, though it did not immediately go into operation, and that the Victoria factories act was amended to provide for wages boards two years later. The New Zealand law, subsequently adopted with modifications in Western Australia and New South Wales, and by the federal government, provided for boards of conciliation, and in last resort for an arbitration court—consisting of a judge and two lay representatives of employers and employees respectively—whose decision is final and has the force of law. The old boards of conciliation never proved important, and were entirely omitted in the New South Wales act. Before an arbitration court, the facts upon which an award is based are determined by testimony, as in any other court of law, and rules of legal evidence are observed. Trade unions always, and employers usually, appear as corporations, and the arbitration acts are what is known in the colonies as company law. The awards of the court, however, may apply to parties not brought before it during the hearings, and thus are legislative in their character.

The wages boards are composed of a larger number of members, representing equally employers and employees, who are practically familiar with the industry in question. They sit under a chairman whom they may themselves appoint. There is a separate board for each trade subject to the law. These boards are negotiating bodies; only in exceptional instances is it necessary for them to determine facts upon evidence, and their working is not dependent on the organization of labor. The findings of the board are binding, throughout a limited district, upon members of the particular trade affected. Their authority is confined principally to determining wages and hours of work; while the arbitration courts have regulated almost every relation of employers and employees that might under any circumstances become an issue in a strike.

These are some of the more salient distinctions between the

two methods of regulating terms of employment at the time these laws were enacted. Their subsequent development has been shaped by legislation and by judicial decisions. In New Zealand the courts first decided that the arbitration judge could grant preference of employment to members of trade unions, or enforce the closed shop. In Western Australia and New South Wales this power was denied the arbitration authorities by the higher courts, though in the latter state it had been expressly granted by statute. The federal law gives the arbitration court authority to grant the closed shop subject to certain restrictions; but no occasion has yet arisen to test the validity of the statute. In New South Wales the higher courts have declared illegal the common rule, by which the terms of an award may be extended to employers or workers not appearing as parties to the dispute.

The wages boards, exercising more modest functions, have come less into contact with the courts; but they have been equally subject to legislative modifications. In Victoria their powers, especially over conditions of apprenticeship, have been restricted. A court of industrial appeals has been created, resembling in some respects an arbitration court. But this higher authority cannot supersede the wages boards, as the arbitration court did the boards of conciliation in New Zealand, because disputes cannot be taken directly before it without prior decision by the board, and appeals are limited to special cases. As yet no tendency is evident to modify this legislation for the purpose of specifically prohibiting strikes; but in practice strikes have been about as rare in trades regulated by wages boards as in those controlled by an arbitration court. However, occupations where the most serious industrial conflicts usually occur, such as transportation and mining, have never come under the cognizance of the Victoria law.

In studying the influence of compulsory arbitration upon strike prevention some classification of employments should be made. There are great industries, especially those associated directly or indirectly with the public service, where strikes are a public calamity, where labor is usually highly organized, where sweating and petty industrial oppression are less common, and where the issues in conflict often relate to the larger policies of the labor movement. Such industries are not so likely to be controlled successfully by wages boards as are minor trades and factory occupations, where

labor, being less able to defend itself by organization, is less aggressive, and the points at issue relate directly to a living wage and reasonable hours of work.

In New Zealand, most industries, on account of the small number employed, belong to this latter category. The attorney-general of that colony, in a public address last June, mentioned eighteen strikes—of which twelve were in violation of the arbitration law—as having occurred during the thirteen years the act had been in operation. In these illegal strikes 740 men, all told, were engaged, an average of only about sixty in each instance. The comparative success of the law is due in no small degree to this fact, for we have no reason to suppose that in New Zealand illegal strikes involved fewer men than normal strikes. In New South Wales and Western Australia no strikes of less than a hundred men have occasioned serious embarrassment. But when we come to larger industries the story is different. To return to New Zealand, last summer the street railways of Auckland, the largest city of the colony, were completely tied up by a strike, in defiance of the arbitration court, on account of a dispute in which wages and hours of work played no part. This dispute was finally settled by a special commission, just as if no arbitration law had been in force. About the same time the street railways of Sydney, New South Wales, were stopped by a similar strike, although this system is owned by the government. In this case also a settlement was effected independently of the arbitration law. Twice in Western Australia several thousand lumbermen and sawmill employees have struck in disregard of the arbitration act, and in both instances the difficulty has been settled by the same means that would be adopted if no such law were on the statute books. The history of recent industrial disputes in the New South Wales coal fields is similar. In a word, I am not aware of any dispute between employers and employees in the colonies, involving a large number of men and reaching a point where, in the United States, one might expect an open rupture, that has been settled without going outside the arbitration act.

The failure of the law in these cases is due to delay in getting hearings more than to any other single cause, and does not involve the principle of compulsory arbitration so much as it does the

machinery by which it is enforced. Doubtless the presence of such machinery has, in cases where both parties were willing to wait for a decision, prevented large strikes that otherwise might have occurred. But our judgment of the law must rest upon the simple facts—up to the present it has not succeeded in preventing strikes of a serious character.

To remedy this weakness of the law, colonial legislators have turned to two measures, increasing penalties for striking and providing means for speedier hearings. The first New Zealand law imposed no penalty for a strike after the court's decision was given, except such as the judge might fix in the award. That is, strikes were forbidden by injunction. New South Wales made strikes statutory crimes, by a special clause of the arbitration law of 1900. Several strikes having occurred in New Zealand within a year or two—for workingmen have grown more defiant of the law since declining prosperity has prevented further increase of wages—the court has ruled that when a union strikes in violation of an award, it shall lose all advantages received through the award, but be held responsible for all the obligations which the award imposes. A union may thus forfeit its existing wage scale and bring in the open shop, without escaping from the penalties imposed by the court for striking. But as lighter punishments have not prevented strikes, parliament has recently adopted measures still more Draconic. A late amendment to the arbitration law makes a worker engaging in, aiding or abetting a strike liable to a fine of ten pounds or to three months imprisonment; and the employer may be required to deduct the amount of the fine from the man's wages. The union instigating or countenancing the offense is subject to a penalty of one hundred pounds; and a similar penalty may be imposed on any person giving money or other assistance and encouragement to strikers. Moreover, a strike is made a continuing offense, and no longer ends, as was held under the old law, as soon as it begins. Last July the New South Wales act, which had been in force for eight years, expired by limitation and was not renewed. A wages board law took its place, in order to remedy the serious evils arising from delays under the old statute, and by a separate provision strikes have been made crimes under heavier penalties than previously. Some 500 stone dressers having recently ceased work in Sydney, to enforce the dismissal of an unpopular workman, the

union officials were fined thirty to forty pounds each, with the alternative of imprisonment.

Not only have wages boards replaced the arbitration court in New South Wales, for the purpose of securing speedier procedure, but in New Zealand a new law, that went into effect last October, requires disputes to be heard before "conciliation councils,"—bodies not unlike wages boards—before they can be appealed to the arbitration court. Thus the general tendency is to combine the better features of the New Zealand and the Victoria methods of dealing with terms of employment, taking from each what experience has shown to be most useful.

South Australia and Queensland have recently established wages boards, following the example of Victoria rather than of New Zealand; so that since the change in New South Wales the greater part of the Australian commonwealth is now under this form of regulative legislation. Tasmania is the only state without either an arbitration or a wages board law. The tendency, therefore, inclines at present towards special boards rather than an arbitration court.

The entire commonwealth is subject to the federal arbitration law, which follows in a general way the New Zealand model; but this act applies only to inter-state industries, and but two awards have been made during the four years since it went into operation. One of these applies to the coastal seamen and the other to the shearers; and neither has given rise to questions of peculiar importance.

There is not space to discuss in the way it deserves the influence of this legislation upon sweating, further than to say that the courts and boards offer what is probably the best machinery yet devised to protect women and children workers from industrial oppression. The board determinations, varying with each industry, and accommodating themselves to its peculiar local conditions, are much more effective than the hard and fast provisions of a general statute. They become, for purposes of enforcement, a part of the factory law of the state, applying to the industry in question by consent of its own representatives. The minimum wage fixed by the board is sometimes evaded; semi-competent workers find it harder to procure positions, so that the feeble and aged in a few instances suffer, but the general effect of the law has been to increase and equalize the pay of those classes of labor least able to obtain fair conditions

of employment through their unassisted efforts. And this function of the laws appears to be assuming increasing importance in the public mind.

Many interesting questions, political and economic, are opened by Australasian experience with this legislation, but they can hardly be discussed intelligently without a more detailed account of the institutions and the industrial life of the colonies than is here permissible. One should discount extreme statements of the effect of these laws. They have not influenced in a marked manner the rise and fall of business prosperity or the growth of manufactures. Average earnings and the cost of living may both have been increased by their influence; but, if so, opinion will differ hopelessly as to whether in equal or unequal ratio. Though the form of these acts may change, there is now more reason than ever before to think that their fundamental principle of state regulation of industry, is firmly entrenched in both Australia and New Zealand. Around this principle is evolving an organic body of legislation destined to influence more or less the legal opinion and public policy of other English-speaking countries. Canada is advancing cautiously toward government intervention in strikes, borrowing many suggestions from New Zealand, and Great Britain is seriously considering wages boards on the Victoria model as a remedy for sweating.

It would be interesting, especially for an American, to follow up some of the constitutional aspects of this and other Australasian legislation affecting labor. The federal parliament recently tried to protect the union label by giving it trademark privileges, but the courts denied this power to the legislature on the ground that under the constitution parliament could not create a new and unprecedented property right. Still more important is the late court decision upon the excise tariff act. That law was intended to give labor specific protection in the federal customs tariff, by making the duty upon imported manufactures coming into competition with articles manufactured in Australia contingent in part upon the payment of fair wages by the Australian manufacturer. The machinery by which this was to be brought about was somewhat complicated, involving the use of an internal revenue or excise tax, to balance the duty where low wages were paid, but to be remitted when wages were satisfactory to the authorities. The courts have ruled

this attempt to regulate labor conditions unconstitutional, a perversion of the power of taxation and an invasion of states rights. It is now proposed to amend the constitution to give parliament definite authority to modify the tariff so as to give specific protection to labor.

New Zealand and Australia are the most interesting legislative experiment stations in the world, and they experiment so actively because their political institutions are extremely democratic. They are doing what people in the United States might do were they able to enforce their will with equal directness through the ballot. Our government is organized on a more conservative basis, and the popular voice manifests itself less directly in legislation. But in addition, our material conditions are different. We have a relatively larger rural population and greater dispersion of landed property. Our industrial life is more complex. We can apply Australasian experience to our own problems only as the mathematician applies the theory of limits to a calculation. It over-reaches what is practicable for us, but it is a concrete expression of social motives, towards which we may approximate.